

Supreme Court of the United States,

OCTOBER TERM, 1911.

No. 784.

SOUTHERN PACIFIC COMPANY
and OREGON & CALIFORNIA
RAILROAD COMPANY,
Appellants,

AGAINST

THOMAS K. CAMPBELL, ET AL.,
constituting Railroad Com-
mission of Oregon, and A. M.
CRAWFORD, Attorney Gen-
eral of the State of Oregon,
Appellees.

APPEAL FROM UNITED STATES CIRCUIT COURT
FOR THE DISTRICT OF OREGON.

Motion to Advance.

TO THE HONORABLE THE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES :

The Southern Pacific Company and the Ore-
gon & California Railroad Company, appellants

herein, respectfully move the Court to advance the above entitled cause to be heard on October 10, 1911, with Simpson *et al.* v. Shepard, No. 599, Simpson *et al.* v. Kennedy, No. 600, and Simpson *et al.* v. Shillaber, No. 601, and The Oregon Railroad and Navigation Company v. Campbell *et al.*, No. 424, for the following reasons :

Nos. 599, 600 and 601 are appeals by the Minnesota State Railroad and Warehouse Commission from decrees of the United States Circuit Court for the District of Minnesota holding that certain rates for railroad transportation within the State of Minnesota prescribed by State statute and by orders of the said Commission are unconstitutional and void because by their natural and necessary effect they substantially burden and directly regulate interstate commerce. No. 424 is an appeal from a decree of the United States Circuit Court for the District of Oregon dismissing a bill filed to enjoin the enforcement of certain rates established by the Railroad Commission of the State of Oregon because of their necessary interference with interstate commerce.

This cause is a suit by the Oregon & California Railroad Company, the owner of a rail-

road in Oregon, and Southern Pacific Company, which operates said road, as lessee, as a part of an extensive system of railroads in various States, against the Railroad Commissioners and Attorney General of Oregon to enjoin the enforcement of certain rates prescribed by the Railroad Commission for transportation within the State of Oregon, being reductions of the rates previously maintained. The bill was dismissed upon demurrer.

The Southern Pacific Company published a tariff naming local rates between Portland, Oregon, and other points on its lines in Oregon. These rates have been reduced by the order of the Oregon Railroad Commission against which this suit is directed.

The rates named in said local tariff, although applying between points all in Oregon, are used as basing rates on interstate traffic originating outside of Oregon destined to points in Oregon on the Southern Pacific Company's line, and said local tariff is filed with the Interstate Commerce Commission.

With a single exception, all traffic subject to application of class rates originating in California south of Marysville and in every other State of the United States destined to points on the Southern Pacific Company's line in Oregon is

transported at through rates obtained by adding to the rate applying to Portland, which is determined by ocean competition, the local rate from Portland to the point of destination in Oregon on the Southern Pacific Company's line. The Southern Pacific Company publishes tariffs covering interstate commerce naming through rates from a large number of shipping points in the state of California to all points in Oregon on its line, which rates are made up by using the ocean competitive rate from San Francisco and other Bay points, to Portland, and adding thereto the local class rates from Portland to points on the line of Southern Pacific Company in Oregon. Through interstate rates from eastern shipping points to points in Oregon south of Portland on the Southern Pacific Company's line are made under tariffs published by carriers participating in transcontinental traffic by adding to the rate to Portland, as the nearest Pacific Coast terminal, the local rate from Portland to destination named in the Southern Pacific Company's said local tariff filed with the Interstate Commerce Commission.

It is alleged in the bill of complaint that the order of the Railroad Commission and the reduction of local rates attempted to be made thereby

would immediately, directly and materially affect, change and alter rates on interstate shipments, and would reduce said interstate rates to the extent of the said attempted reduction of the local rates specified in said order, and that it would materially and directly affect all interstate freight traffic of the Southern Pacific Company and other common carriers moving traffic to Portland, and to other points on the line of Southern Pacific Company in Oregon. By way of illustration the bill shows that the through rate on syrup in car loads from New York to Eugene, Oregon, under the Transcontinental Freight Bureau West Bound Tariff was the rate from point of origin to Portland, namely, 85 cents per hundred pounds, plus the local rate from Portland to Eugene, namely, 33 cents per hundred pounds, making a through rate of \$1.18; and that the effect of the order of the Oregon Railroad Commission reducing the local rates between Portland and other points in Oregon on the Southern Pacific Company lines would be to reduce the through interstate rate on syrup from New York to Eugene for car loads to \$1.08. On less than car loads a similar reduction from \$1.61 to \$1.53 would result. Other illustrations of the effect of the order upon interstate commerce are set forth in the bill.

The bill charges that the order of the Railroad Commission is void in that it directly, materially and substantially affects the rates upon practically all the interstate shipments of the appellants, and thereby regulates interstate commerce in violation of Article 1 Section 8 of the Constitution of the United States conferring upon Congress the exclusive power over interstate commerce.

The question presented in this cause is the right of the State or its representatives to prescribe rates upon intrastate transportation when such intrastate rates naturally and necessarily effect the rates upon interstate commerce to and from that State. The question is identical with that presented in the Minnesota rate cases and in the case of The Oregon Railroad and Navigation Company against the Railroad Commission and Attorney General of Oregon. This question is of the gravest public importance not alone to the State of Oregon and the common carriers immediately affected, but to the public of every State and to every common carrier within the United States. The convenience of the Court and of the parties and the interests of the public generally will be subserved by the advancement of this cause to be heard at the

same time with the other cases hereinbefore
named involving the same question.

Dated September 25, 1911.

Respectfully submitted,
MAXWELL EVARTS,
WILLIAM D. FENTON,
Of counsel for Appellants.

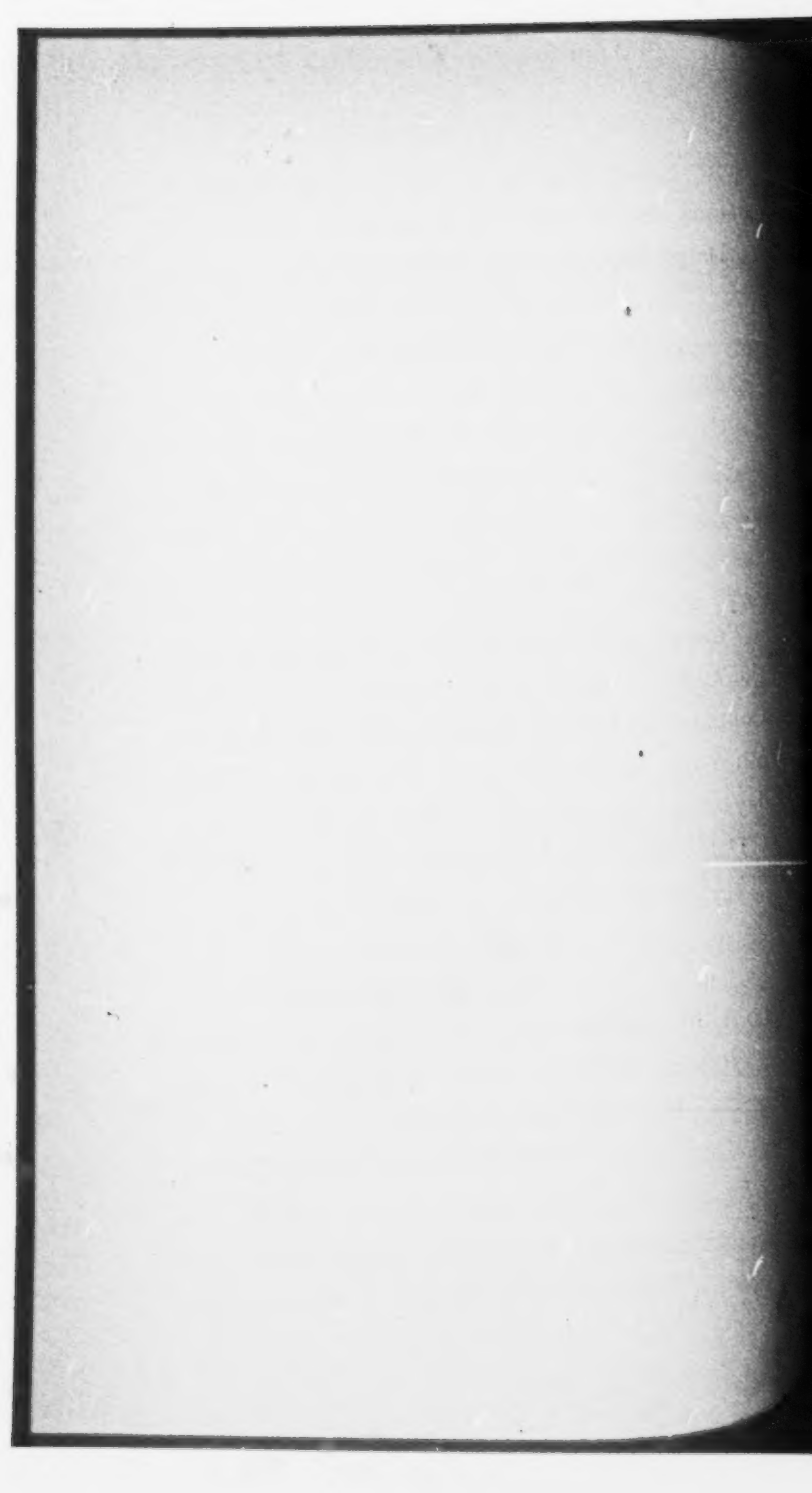
Notice of Motion.

PLEASE TAKE NOTICE that the foregoing motion to advance will be submitted to the Supreme Court of the United States on Monday, October 9th, 1911, at the opening of the Court on that day or as soon thereafter as counsel can be heard.

Dated September 25, 1911.

MAXWELL EVARTS,
WILLIAM D. FENTON,
Of counsel for Appellants.

To A. M. CRAWFORD,
JOSEPH N. TEAL,
CLYDE B. AITCHISON, ESQRS.,
Counsel for Appellees.



SUPREME COURT OF THE UNITED STATES

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THOMAS K. CAMPBELL ET AL.,
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Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR
THE DISTRICT OF OREGON.

RESISTANCE TO MOTION TO ADVANCE.

*To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Come now Thomas K. Campbell, Clyde B. Aitchison and
Frank J. Miller, constituting Railroad Commission of
Oregon, and A. M. Crawford, Attorney General of the
State of Oregon, appellees herein, and respectfully oppose
the motion made by the appellants to advance the above
entitled cause to be heard on October 10, 1911, with

Simpson *et al.* v. Shepard, No. 599, Simpson *et al.* v. Kennedy, No. 600, and Simpson *et al.* v. Shillaber, No. 601, and The Oregon Railroad and Navigation Company v. Campbell *et al.*, No. 424, for the following reasons:

1. That if the motion to advance is sustained and this cause is consolidated with those set for hearing upon October 10, 1911, there will not be sufficient time for the printing of the record and for the preparation and printing of brief and argument on behalf of these appellees.

2. That the issues in this cause, while embracing some of the issues in The Oregon Railroad and Navigation Company v. Campbell, *et al.*, No. 424, embrace other and important constitutional questions.

3. That Maxwell Evarts, Esq., who is of counsel for appellants in this cause is, as appellees herein are informed, also of counsel for appellants in No. 424, The Oregon Railroad and Navigation Company v. Campbell, *et al.*, and will have full opportunity to be heard in opposition to these appellees upon the question of the interference with interstate commerce suggested by the motion to advance, when cause No. 424 is presented. The members of Railroad Commission and Attorney General, appellees herein, are also appellees in cause No. 424.

The objections raised by the bill of complaint to the order of the Railroad Commission sought to be enjoined were summarized as follows by the court below in its opinion:

"First.—The act of the legislature creating the Railroad Commission is unconstitutional and void, because (a) of the excessive penalties and burdens imposed for refusal to obey the orders of the Commission; (b) because its provisions are not uniform and equal in their application; (c) because it confers upon the Commission legislative, executive, and judicial powers; (d) because rate making is a legislative function and a rate cannot be made to take effect upon the order of a subordinate com-

mission; (e) because it requires a railroad company aggrieved by an order of the Commission to prosecute any suit to review the same in the State courts; (f) because it provides for a judicial review of the orders of the Commission.

"Second.—The order in question is violative of the Constitution of the United States because it directly and materially affects interstate commerce, since the rate on interstate traffic over complainant's lines in Oregon is made up by the through rate to Portland with the local rate out.

"Third.—The law under which the Oregon & California Railroad Company was incorporated provides that a corporation organized thereunder 'shall have power to collect and receive such tolls and freights for transportation of persons and property as it may prescribe,' and thus deprives the State of the power to fix rates for transportation of freight or passengers.

"Fourth.—The rates fixed by the Commission and sought to be enjoined in this suit are so unreasonably low as to amount to a confiscation *pro tanto* of complainant's property.

"Fifth.—The order of the Commission was based upon an arbitrary approval of Class One of rates then in force on complainant's line and an arbitrary spread between such class and other classes without any reference to the distance the traffic was to be carried, the character or nature of the service to be performed, or the compensation that should be paid therefor.

"Seventh [Error: should be Sixth].—That the rates prescribed by the Commission are unreasonable, and this Court should review the same under the provisions of the Commission Act."

All of the points above summarized have been preserved by appellants in their assignment of error.

It will be observed that the motion to advance does not refer to any of the issues above summarized except the second. An examination of the record in cause No. 421 will disclose that the objections to the order summarized above as third, fourth, fifth and seventh are peculiar to this case. Appellees are desirous of being heard fully thereon. The notice to advance is, according to notice served upon appellees, to be heard on Monday, October 9, 1911, at the opening of Court on that day, or as soon thereafter as counsel can be heard. The prayer of the motion is that the cause be set down for argument on the following day, October 10. Between October 9 and October 10 is insufficient time for the printing of the record and the preparation and printing of briefs.

These appellees do not object to an order advancing the above entitled cause upon the docket, provided a reasonable time is given for the printing of the record and for these appellees properly to prepare and file their brief and argument upon questions not involved in the case set for argument October 10, 1911.

A. M. CRAWFORD,

Attorney General of the State of Oregon.

CLYDE B. AITCHISON,

Of Counsel for Appellees.